

# ENFORCEMENT PROGRAM

National Highway Traffic Safety Administration

April 2013

# United States Vehicle Safety Program

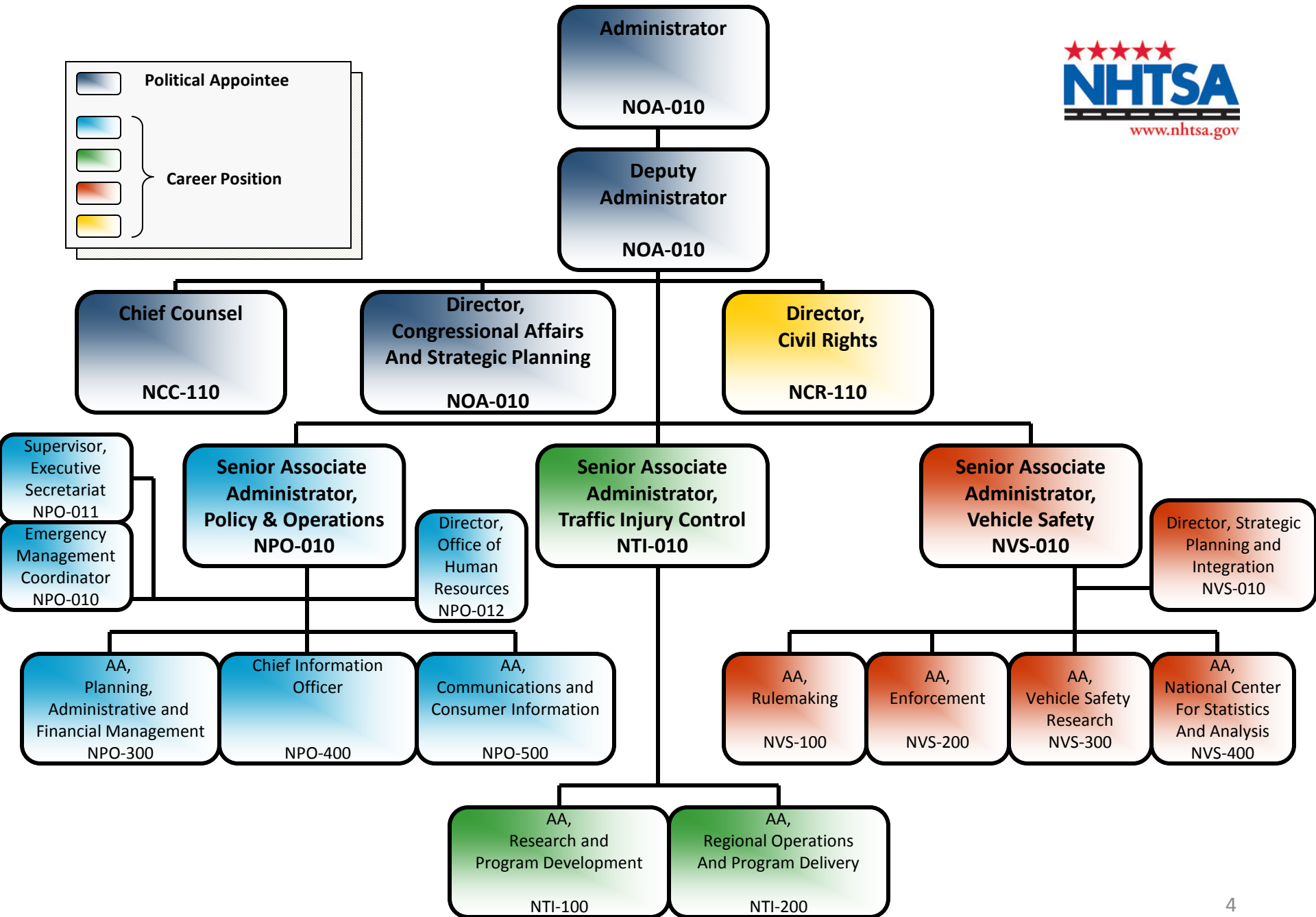
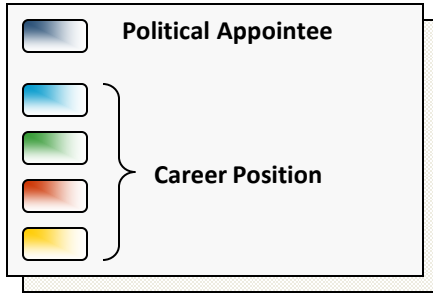
- National Highway Traffic Safety Administration (NHTSA) has authority over two large program areas: highway safety (human behavior) and vehicle safety
- Vehicle safety program is comprehensive:
  - Data: National Center for Statistics and Analysis
  - Research
  - Rulemaking (standards)
  - Enforcement

# Summary of Authorizing Legislation

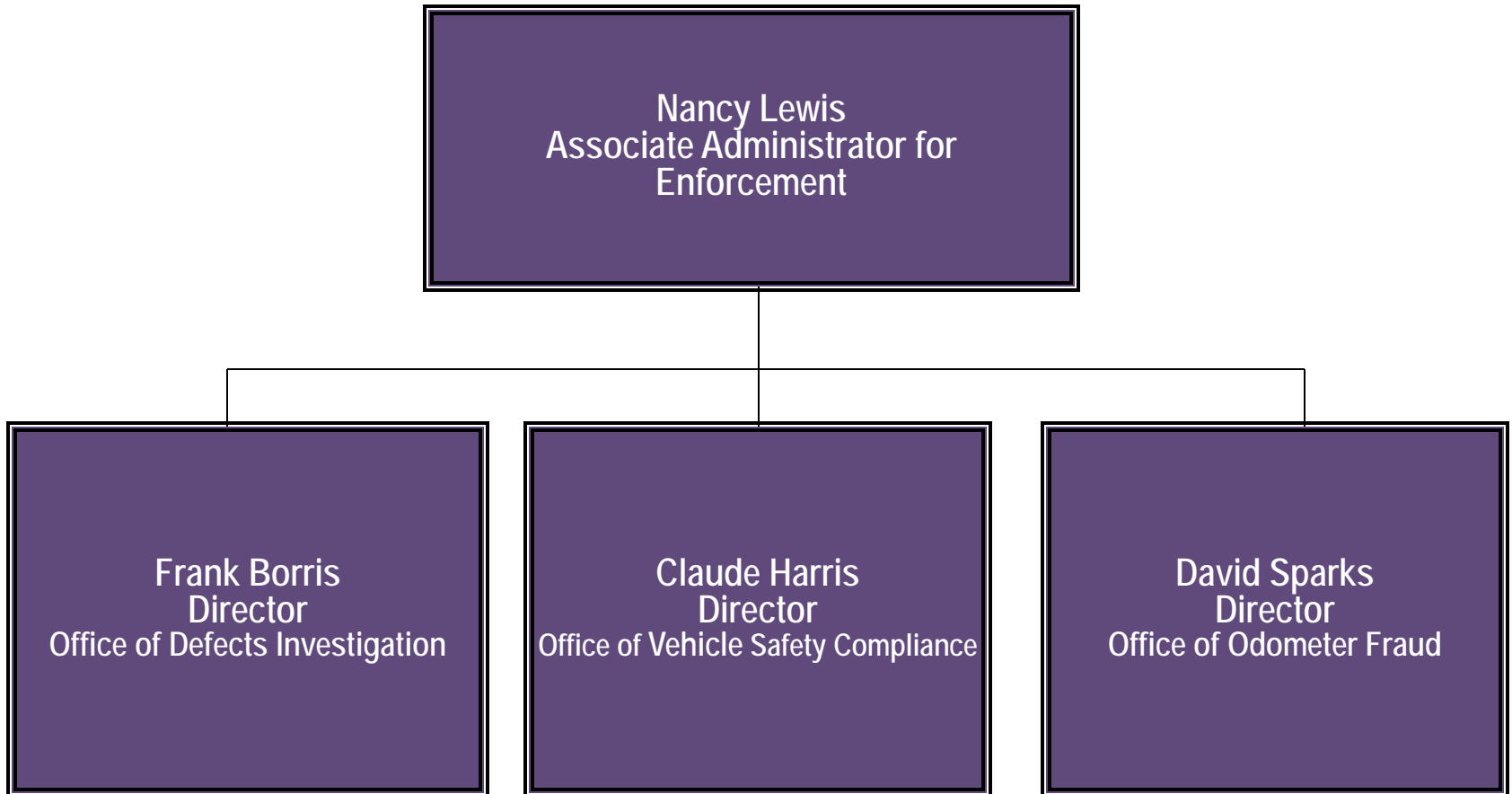
- Primary statute: The National Traffic and Motor Vehicle Safety Act (1966), 49 USC Chapter 301
  - Establish and enforce safety standards for new vehicles and equipment and conduct related research
  - Recall and remedy of noncompliant or defective vehicles and equipment

## Federal Motor Vehicle Safety Standards (FMVSS):

- Must meet a safety need
- Be practicable (technologically and economically)
- Objectively measurable compliance
- Performance-oriented (not design restrictive)
- Appropriate for each vehicle type



# Enforcement



# Enforcement Responsibilities

Three primary types of enforcement:

- **Vehicle safety**: recalls for **defective** or **noncompliant** vehicles or equipment
- **Fuel economy**: civil penalties for violations of CAFE standards by manufacturers
- **Odometer fraud**: criminal prosecution of offenders

# Vehicle Safety Enforcement

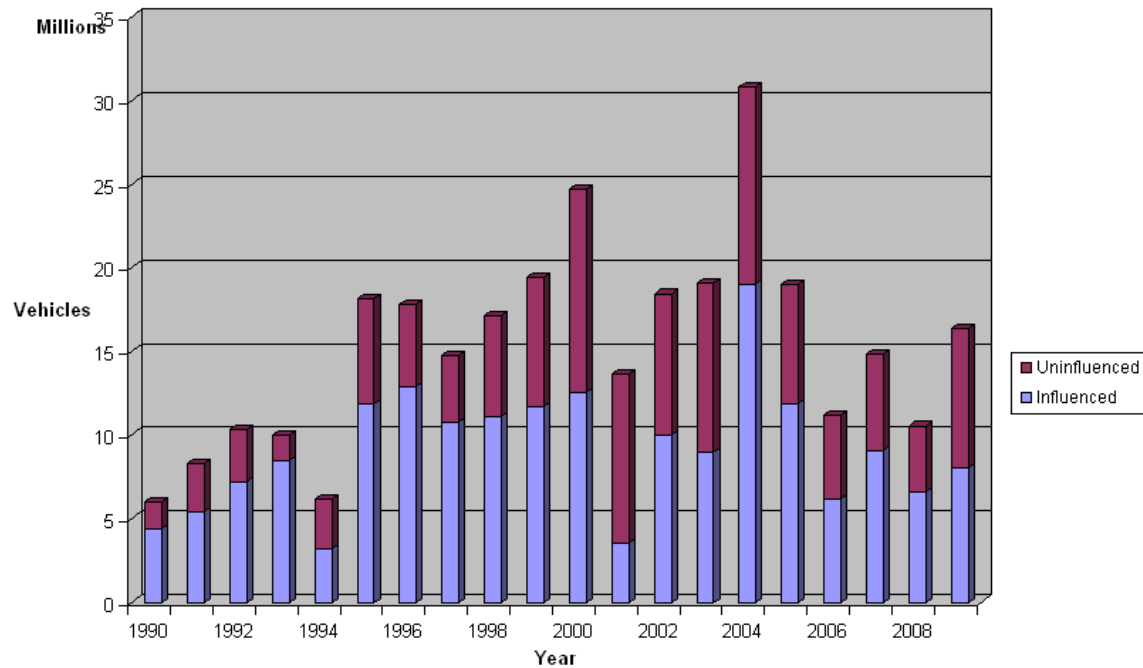
- Basic principles:
  - **Self-certification:** manufacturers must certify that their vehicles and equipment comply with the Federal Motor Vehicle Safety Standards (FMVSS).
  - **Prohibition:** a person may not manufacture for sale, offer for sale, introduce into commerce, or import a noncompliant vehicle or equipment.
  - **Importers are manufacturers:** Statutory definition of “manufacturer” states this, so importers share duties of manufacturers.

# Vehicle Safety Enforcement

- Basic principles (continued):
  - **Duty to recall:** a manufacturer must do a recall (i.e., notify owner and provide remedy for the entire population of affected vehicles or equipment) if it learns of a safety defect or noncompliance or if NHTSA decides there is a defect or noncompliance.
  - **NHTSA may order a recall.**
  - **Defect** that creates an unreasonable risk to safety warrants a recall.
  - **Fully compliant vehicles or equipment may contain safety defects.**



# Vehicles Recalled 1990-2009



# Other Enforcement Tools

- **Civil penalties**
  - Current limits: \$6,000 per violation with a maximum of \$17,350,000 for a related series of violations
  - Chief Counsel issues penalty demand letter, negotiates with respondent, and considers statutory criteria (gravity of violation, size of business) and litigation risk in determining amounts
- **Injunctive relief** for violations of statute is available, but statute encourages NHTSA to provide notice and an opportunity to remedy the defect or noncompliance before seeking relief
- **Criminal penalties** are available for false reporting with intent to mislead NHTSA about defects that have caused death or serious injury (supplements basic false statement statute, 18 USC 1001)

# Office of Defects Investigation

- “Defect related to motor vehicle safety” is a problem in performance, construction, a component, or material that creates an unreasonable risk to safety
- Nearly all recalls are voluntary: manufacturer either initiates recall on its own or is influenced to do so by NHTSA’s investigation.
- NHTSA can order manufacturer to conduct recall after an opportunity for a hearing.
- NHTSA can seek enforcement of its order in court, where NHTSA must prove existence of a defect that creates an unreasonable safety risk.

# Defects Enforcement

- Office of Defects Investigation screens many sources of information about possible defects to identify likely candidates for investigation:
  - Complaints (nearly 50,000 per year): Auto Safety Hotline, letters, e-mail, vehicle owner questionnaire on Internet
  - Manufacturer notices, bulletins, advisories
  - Foreign recall reports
  - Early warning reports (death or injury incidents, damage claims, warranty claims, consumer complaints, field reports): huge volume of data
  - Petitions from public

# Defects Enforcement

- Mechanical or electronic failures posing a safety risk
- Examples:
  - Stalling
  - Brake light switch
  - Fires
  - Tire failures
  - Fuel leaks
  - Ball joint fracture



# Office of Vehicle Safety Compliance

- Manufacturers must comply with nearly 60 motor vehicle and equipment standards covering subjects such as crashworthiness (air bags, roof crush, etc.) and crash avoidance (brakes, ESC)
- OVSC purchases new vehicles and equipment and tests them for compliance with the FMVSS
- Requests and reviews manufacturer's certification data (manufacturers have duty to certify that their vehicles or equipment comply with standards)
- In the event of an apparent noncompliance, OVSC conducts investigations that may lead to a safety recall campaign and could result in the collection of civil penalties from the manufacturer
- OVSC also plays a vital role in rulemaking by developing compliance test procedures for inclusion in safety standards

# Fuel Economy Enforcement

- OVSC administers CAFÉ fuel economy enforcement program
- Energy Policy and Conservation Act of 1975 (49 USC Chapter 329) authorizes NHTSA to collect civil penalties for violations of CAFE standards
- Penalty formula:  $[\$5.50] \times [\text{each } 1/10 \text{ of a mile per gallon by which the fuel economy standard exceeds the mileage achieved by the manufacturer's fleet}] \times [\text{the number of vehicles in that fleet}]$
- Penalties can be offset by credits earned for exceeding the standard
- NHTSA bases penalty and credit determinations on final reports submitted by EPA
- Limited bases for compromising penalties: prevent insolvency; act of God, strike, or fire; FTC makes finding on effect on competitiveness
- Collect CAFE civil penalties (about \$13 million each year)

# Office of Odometer Fraud Investigation

- Conduct criminal investigations concerning possible violations of odometer fraud laws
- Investigators are law enforcement officers who work closely with Department of Justice prosecutors
- Investigations have resulted in more than 250 convictions, plus millions of dollars in court ordered restitution



Thank You